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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/892,993

06/27/2001

Kelly R. Brown

ETH-1567

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07/28/2006

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EXAMINER

FUBARA, BLESSING M

ART UNIT

PAPER NUMBER

1618

DATE MAILED: 07/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/892,993	<b>Applicant(s)</b> BROWN ET AL.	
	<b>Examiner</b> Blessing M. Fubara	<b>Art Unit</b> 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 26-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Examiner acknowledges receipt of request for reconsideration, amendment and remarks filed 5/02/06. New claim 29 is added. Previously presented claims were not amended. Thus, claims 26-29 are pending.

Upon further review and consideration, it is noted that while the original claim 25 recites boring a receptacle ... and placing and securing the scaffold in the receptacle, these steps are not described by the specification as filed.

Thus, the following rejections and objections are made below.

#### ***Claim Rejections - 35 USC § 102***

1. The rejection of claims 26-28 under 35 U.S.C. 102(e) as being anticipated by Vacanti et al. (US 6,171,610) is withdrawn because while Vacanti discloses repairing damaged tissues such as the meniscus of the knee or elbow, spinal cord and cartilaginous tissue with a support structure that comprises porous hydroxyapatite, a ceramic material (claim 30) or polymeric fibers and where the support structure may be in the form of a sponge or foam or mesh of fibers (column 2, lines 51-54; claim 25), porous ceramic material and porous polymer are not interconnected by way of the polymer at least partially infusing into the ceramic phase. The hydrogel composition, which is made up of polyester, say, (claims 33) is introduced into the formed ceramic support structure. In this case the hydrogel composition carrying the cells flows into the pores of the ceramic phase partially filling the support structure (claim 21). In this case

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also, the ceramic phase may not be interlocked with the polyester or polymer and the prior art is silent on whether the polymer phase is porous or non-porous.

***Specification***

***Objection***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification does not provide antecedence for boring a receptacle space in the gradient junction at the site of the injury ... and placing and securing the scaffold in the receptacle space ... to the cartilaginous tissue as recited in claims 26-28.
3. Since original claim 25 is part of the original specification, the specification may be amended to include the elements of claims 26-28, derived from original claim 25, in the specification to provide antecedence for the limitation in the claims 26-28.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:  
  
The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
5. Claims 26-29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This is written description rejection.

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To satisfy the written description requirement, applicant must convey with reasonable clarity to one skilled in the art, as of the filing date that application was in possession of the claimed invention. There is no description in the specification for boring a receptacle ... and placing and securing the scaffold in the receptacle.

Claims employing boring a receptacle ... and placing and securing the scaffold in the receptacle are not described and the specification does not inform the public of the limits of the monopoly asserted.

This rejection may be overcome by incorporating the limitations of original claim 25, which are now part of claims 26-28 into the specification


Suggestion: It is suggested that the claims 26-28 recite the lyophilization or freeze drying process in the production of the foamed porous interlocking ceramic-polymer phases to help to further the prosecution of the pending claims to further distinguish over at least Vacanti.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is (571) 272-0594. The examiner can normally be reached on 7 a.m. to 5:30 p.m. (Monday to Thursday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Blessing Fubara  
Patent Examiner  
Tech. Center 1600